responsibility that naturally attaches to a seat in the Council is only heightened when the nominee happens to be a non-official. It shall always be my endeavour to deserve by my work in this Council the confidence that Government have placed in me; and this Council may be assured that in all matters that may come up before them for consideration, the very best I am capable of doing will always be at their disposal. Nothing will give me greater pride and pleasure than to be able to say at the end of my term that I tried to serve my Sovereign and my country loyally and conscientiously as a member of this Council.

Mr. Viraraghava Aiyangar.—I beg to offer my grateful thanks to the President for his kind reference to me. I will strive to the best of my ability to give every satisfaction in the discharge of my duties as Secretary.

BILL TO PREVENT LOSS TO GOVERNMENT BY THE MISCONDUCT OF PUBLIC SERVANTS.

Mr. Kesava Pillai.—With the permission of the Dewan, a Bill to prevent loss to the Government by the misconduct of Public Accountants has been published in the Gazette under Rule 32. In the heading of the Bill as published, the term 'Public Servants' is used instead of the term 'Public Accountants.' This mistake will be rectified. As fifteen days have elapsed since the publication of the Bill and as it has been circulated among the members, I beg to introduce it under Rule 33.

The Bill is a simple one, consisting of 3 sections. Its object is not to introduce any novel scheme, but simply to legalise a long-standing practice. The circumstances which have led to the introduction of the Bill are, I hope, well-known to the Council. The High Court ruled in a recent case that the Sirkar can recover the liabilities of a public servant only by means of a civil suit. It became necessary, therefore, to pass an enactment to legalise the usage under which such liabilities were, for a long time past, recovered like arrears of land revenue. A Bill was accordingly introduced for the purpose, as an amendment to Regulation VI of 1073. But it was withdrawn at the last meeting of the Council, as a separate enactment dealing with the subject appeared to be necessary. The present Bill has, therefore, been drafted and published in the Gazette.

Section 1 of the Bill is a re-production of section 3 of Act XII of 1850. The other two sections have been drafted on the lines of sections 25 and 26 of of Bombay Act V of 1879.

The term 'Public Accountants' is so defined as to include all Public Servants and Official Assignees and Trustees entrusted with the custody and control of any moneys, securities for money, public papers or other property. The Bill provides for the speedy recovery of moneys or other property in every case in which the Government may have a claim against any Public Accountant actually in service or previously employed as such. It is, of course, presumed that any previous departmental enquiry necessary towards the determination of the claim will have been held before steps are taken under the proposed enactment.

The power to imprison a Public Accountant for failure to discharge his liability is given to Collectors in the Bombay Presidency. Although this provision of the Bombay Land Revenue Code is rarely applied in practice, yet it acts as a wholesome means towards ensuring prompt compliance with the Government demand and has therefore been adopted in the Bill.

One point more has to be noted. As the liabilities of Public Accountants will be recovered like arrears of land revenue, any civil remedy against Government provided by the Revenue Recovery Regulation will still be available in respect of cases falling under the proposed measure.

With these observations, I beg to move that the Bill be read in Council and that its principle be affirmed.

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Mr. Govinda Pillai.—Sir, I approve of the principle of the Bill. I agree in thinking that the Executive should be invested with summary powers for the recovery of public property entrusted to public servants. The reason for this is, as in the case of the public revenue, that special protection should be provided for the fund by which Government is to be maintained. I shall, however, make a few observations, not by way of criticism of the Bill, but by way of suggestions with a view to avoid undesirable interference with private rights consistently with the safeguarding of public property.

One striking feature of the Bill appears to me to be that, while it proposes to adopt the summary procedure for the recovery of the property, it makes no provision for cases in which the claim under section 2 may be disputed on just grounds by the public servant concerned. The adoption of the procedure of the Revenue Recovery Regulation is, by section 3, *confined to the proceedings for the recovery* of the property or money due, such as attachment and sale. A reference to sections 6 and 7 of the Revenue Recovery Regulation will show that such proceedings do not cover the hearing of objections of the defaulter. The distinction between the two stages in the proceedings will be clear from section 26 of the Madras Revenue Recovery Act, from which ours is borrowed.

The point then arises whether, under the Bill, the Division Peishcar will be bound to hear objections and decide the question of liability by a formal order. Section 2 does not require him to do so; and under it, the demand notice may issue in pursuance to an *ex parte* decision by the Peishcar, not only in cases arising in his own department but also on the application of the head of any other department. Even in the latter case, the Peishcar is allowed no discretion in the issue of the demand notice.

It will be seen that the Bombay Land Revenue Code (section 26), from which section 3 is borrowed, provides that the recovery must be subject to the same rules as are laid down in that Act for the recovery of land revenue; and the British Act No. XII of 1850 (section 5) expressly provides that the whole procedure in the matter of realisation (including the hearing of objections) should be according to the Revenue Recovery Act. It will thus be seen that both the Acts, from which the proposed enactment is borrowed, contain provisions for the hearing of the objections of the defaulter, which are omitted in the present Bill. It will be further noticed that neither in the Bombay Act (see section 26) nor in the British Act No. XII of 1850 (see section 4), is it made obligatory on the Revenue head of the district to issue the demand notice on the mere requisition of the head of any other department as provided in section 2 of the Bill. The Public Demands Recovery Act of Bengal (Act No. VII of 1880, section 7, sub-section 9) expressly vests a discretion in the Collector in drawing up his certificate and issuing the demand notice.

To obviate the above objections, I think it would be desirable to substitute "may" for "shall", in line 11 of section 2, and to insert "after recording the defaulter's defence if any" before "by writing" in the same line.

Secondly, it may be doubted whether according to the present administrative policy of this State, it would be desirable to take power to imprison the defaulter as provided in para 2, section 2. In framing the Revenue Recovery Regulation of 1068, this Council declined to adopt the provision as to imprisonment of the Madras Act (Act No. II of 1864, section 48), which enactment too provided imprisonment only in cases of wilful default or fraudulent conduct on the part of the defaulter. It may be doubted whether to empower an executive officer to imprison a subordinate for a defalcation which may be only imaginary is not a retrograde step in the history of legislation in this country which shows that, even for judgment-debts found due after formal trial, the tendency has been to reduce the period of imprisonment in the civil jail. If, however, the clause in question should be retained, I would suggest that power be given to the Peishcar to release the defaulter on giving security, by adding the words "or gives security to the satisfaction of the Peishcar" at the end of para 2, section 2. I may add that this indulgence is given to judgment-debtors

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by section 325 of the Civil Procedure Code, and to revenue defaulters by section 43 of Regulation I of 1068, and I can see no reason why it should not be extended to defaulting public servants.

Thirdly, comes the question of the defaulter's right to seek a civil remedy. The Bill expressly gives him no such right. But suppose, in any case, it turns out that the claim for which the demand notice was sent under section 2 had no real existence, or suppose that the demand notice was not signed by the Peishcar, or duly served on the defaulter, or that in taking proceedings for recovery under section 3, one property was advertised and another sold. Each of the above mistakes and irregularities would seriously affect private rights, and as the Bill does not go to the extent of expressly disallowing civil suits, I believe it will be hardly doubted that, by force of section 7 of the Civil Procedure Code, in each of the above cases, the defaulter will be entitled to have the sale cancelled. (See I. L. R. 25 C. 833; 20 C. 826; 27 C. 698; and 29 C. 73).

If such suits are maintainable, which I believe will not be disputed, the question arises, what is the period of limitation for them? The Police Act (Regulation IV of 1056, section 30) allows three months, the Towns Conservancy Regulation (Regulation III of 1076, section 100) allows eight months, and the Revenue Recovery Regulation (Regulation I of 1068, section 51) allows six months, for suits by parties aggrieved by anything done under those Regulations. In the absence of any special provision in the Bill, it is probable that the period of limitation for such suits will be at least one year under the Limitation Regulation. If this be the legal effect of the Bill, it is a matter for consideration whether there should not be an express provision in it as to civil suits in the interests of Government itself, apart from the question of security to private right. It will be seen that provision, on both aspects of this question, is expressly made in Act XII of 1850 section 5. I would, therefore, suggest that a section be added to the Bill as section 4 as follows:

"All suits against the Sirkar or its officers for any thing done under the provisions of this Regulation, shall be brought within six months from the date when the cause of action arose."

Mr. Ramier.—Sir, at this stage of the Bill when we are discussing the principle under the 2nd clause of Rule 33, I believe we have to confine ourselves to the general aspect of the Bill. I shall not, therefore, take the time of the Council by going into the details as regards any alterations that may have to be made or any defects that may have to be remedied in the Bill as now introduced. Now, we are only concerned with the general principles involved in the Bill. If I understand aright, the main object of the measure is to arm the Executive with power to recover by summary process, such as that we find in the Revenue Recovery Regulation, any claim that Government may have against public servants for moneys or other properties that have been in the custody and control of such servants. That I take to be the main principle of the Bill, and I do not think there is any divided opinion in the Council as regards the necessity for such a measure. In fact, this question was discussed in connection with the Bill which was withdrawn and in whose place the present Bill is introduced, and the necessity for a measure has been affirmed.

Now, with reference to the general provisions of the Bill, I should like to make a few general observations with the object of throwing some hints which may help in the consideration of the Bill when it reaches the next stage. Further, there is some misconception in certain quarters as regards why the former Bill was withdrawn and why the present Bill in its present shape is introduced. This is another reason for the few observations I propose now to make. The first point that strikes us is what was not in the original Bill and what is now introduced, *viz.*, the confinement in the civil jail in certain cases for a period of one month. In reference to that, what I have to say is this. As you are aware, the provisions of this Bill are taken out of two Acts. The first section defining a Public Accountant is taken from Act XII of 1850, and sections 2 and 3 dealing with the provisions for recovering the

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claim against public servants from sections 25 and 26 of the Bombay Land Revenue Code. The former Act which applies to all departments restricts its scope to defalcation in accounts only and does not provide for confinement in jail. Section 4 of Act XII of 1850 says :—

"The person or persons at the head of the office to which any public accountant belongs may proceed against any such public accountant and his sureties, for any loss or defalcation in his accounts, as if the amount thereof were an arrear of land revenue due to Government."

But the Bombay Code which deals with all claims against public servants without any restriction and which provides for confinement in civil jail applies only to the servants of the Revenue and Survey Departments. Further, it may be seen from the heading of Chapter III in which these sections are contained, "Of the security to be furnished by certain Revenue Officers and the liability of principals and sureties", that the class of officers from whom the claim may have to be enforced are generally those from whom security may have been taken. Again, Act XII of 1850 also provides for security to be taken from the Public Accountants defined in that Act. Thus, we see that the provisions which apply to all departments are confined to defalcations only and those that apply to two departments alone in Bombay, though more comprehensive, are also likely to apply to only well-ascertained claims. But under the scope of the present Bill, where we include public servants of every Department, D. P. W., Forest, Educational or any other, and deal with all claims including liability, it will be a matter for consideration—and serious consideration of the Council—whether it would be necessary to have the provision of confinement in the civil jail. Further, as pointed out by my learned friend Mr. Justice Govinda Pillai, there is this also to be considered. We have gone further than the British Indian legislation in reference to our revenue recovery and have thought it unnecessary to have this confinement in the jail for the purpose of revenue recovery. Having gone so far, whether there is any necessity to go back and adopt this provision in the case of the public servants will also be a matter for the consideration of the Council. I, however, take this as a matter of detail and it may be left for consideration at a later stage.

The next point I would touch upon is this. The claim mentioned in section 2, I dare say, means the claim as determined and for which action is to be taken. That is what was stated by the learned Mover of the Bill. If it is so, it has to be made more explicit in reference to the enquiry by which the claim is to be determined. But I think there is another matter connected with this. It appears to me that the object of the legislation is not solely for the recovery of the money from the public servants after it is ascertained, but for another object as well, namely, for immediate attachment. That is to say, you start an enquiry against a public servant for misappropriation or things of that kind. It might take some time for coming to a decision as to the nature and extent of the claim against him. But pending such decision by whomsoever it may be, you might have, to secure the object in view, *viz.*, to prevent loss to Government, to put an immediate attachment upon his properties in the way we do under the Civil Procedure by 'attachment before judgment.' That point would be missed if the object of the Bill is only restricted as the learned Mover has told us. If the sense of the Council is, as I believe it would be, to have an immediate attachment as well, provision will have to be made to secure that object. The scope of our Bill being more extensive than that of Act XII of 1850, the definition of 'Accountant' in that Act will have to be a little modified so as to take in the extended scope of our Bill.

The next point is about the provision for surety. That has been touched upon by the learned Judge and I need not re-state it.

Lastly, there is one point in reference to which there is a thorough misconception in the minds of a portion of the public. I have heard it said by several that the Bill which contained a provision entitling the public servant to take an action before

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the civil courts to redress his grievances was withdrawn as the relief was not intended to be given by the Government, and it is, therefore, this Bill which does not provide for it is now introduced and that that right of suit is going to be taken away. The Mover has assured us there is no such idea. He told us that though it is not expressly mentioned here, there is that general right of suit and that it can be exercised. The learned Judge who followed him also told us that, under certain conditions, suits can be brought even without express provision within the time provided by the Limitation Regulation, which time the Council would naturally be unwilling to grant if they make a special provision. Gentlemen, let us see how the matter stands in British India. Why all this doubt on the subject? Section 5 of Act XII of 1050 lays down:

"V. All Regulations and Acts now or hereafter to be in force for the recovery of arrears of land revenue due to Government, *and for recovery of damages by any person wrongfully proceeded against* for any such arrears, shall apply, with such changes in the forms of procedure as are necessary to make them applicable to the case, to the proceedings against and by such Public Accountant."

Section 59 of the Revenue Recovery Act which was made applicable under section 5 of Act XII of 1850, gives the right of suit to those that are aggrieved by any of the proceedings under that Act. As far as Act XII of 1850 is concerned, the right is expressly given. Let us see the Bombay Code. The Code itself does not deal with right of suit in Civil Courts. But Act X of 1876 (The Revenue Jurisdiction Act) which by section 4 takes away the remedies in civil suits in certain classes of cases, does not take away the right of a suit against Government now under consideration. Not only is it not taken away but it is expressly reserved by section 5 which runs thus:—

"Nothing in section four shall be held to prevent the civil courts from entertaining the following suits:—

(*a*) suits against Government to contest the amount claimed, or paid under protest, or recovered, as land-revenue on the ground that such amount is in excess of the amount authorized in that behalf by Government, or that such amount had previous to such claim, payment, or recovery been satisfied, in whole or in part, or that the plaintiff, or the person whom he represents, is not the person liable for such amount;

(*b*) suits between private parties for the purpose of establishing any private right, although it may be affected by any entry in any record of a revenue survey, or settlement or in any village papers;

(*c*) suits between superior holders or occupants and inferior holders or tenants regarding the dues claimed or recovered from the latter;

and nothing in section 4, clause (*g*), shall be held to prevent the civil courts from entertaining suits, other than suits against Government, for possession of any land being a whole survey number or a recognized share of a survey number."

It is clear from this that suits can be brought to contest the claim. We go further and what do we find? When you come to section 6, it says:

"Revenue officers shall not be liable to be sued for damages in any civil court for any act *bona fide* done, or ordered to be done, by them as such in pursuance of the provisions of any law for the time being in force.

If any Revenue officer absconds or does not attend when called on by his official superior, and if the Collector of the District proceeds against him or his sureties for public money, papers or property according to the provisions of any law for the time being in force, such Collector shall not be liable to pay damages or costs in any suit brought against him by such officer or sureties, although it appears that a part only, or no part whatever, of the sum demanded was due from the officer so absconding or failing to attend, or that he was not in possession of the papers or property demanded of him."

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h the defaulting public servant absconds, the right c
as a penalty, clearly indicating that he has got the

From this we find that w Again, come to section 11, which says:—
civil suit is taken away from h
right to sue in every other ca entertain any suit against Government on account of
evenue officer unless the plaintiff first proves that, pre-

"No civil court shal he has presented all such appeals allowed by the law for
any act or omission of any within the period of limitation allowed for bringing such
viously to bringing his su esent".
the time being in force, a
suit, it was possible to p ded by this section is that you must exhaust your remedy
ue courts before going to the civil courts. Undoubtedly, the

All that is inte courts is granted.
of appeal in the rever
right of suit in civil connected with this Council could have had such an idea of taking

It seems t suit in civil courts, so that the misconception that the present
Bill nor anybody to take away the right of civil suit appears to me utterly groundless.
away the right that the Mover of the Bill stated it first, but I thought it is better to
Bill is intended more clear, and that is all my apology, Sir, for my speaking at this
It was well is point.
make it
length When you look at the measure, it is undoubtedly a measure that is intended
oid loss to the public fund. In this fund, any individual of the public is as
n interested as the Government itself. The measure is undoubtedly a necessary
to av and all that is needed is a little mending here and supplying omissions there,
muc ich, undoubtedly, will be done by the sense of the Council at its next stage.
onc
w

Mr. Mahadeva Aiyar.—After what has been said by the learned members who
su ave spoken before me, it is needless for me to say anything in defence of the
ci principle of the Bill. As far as I can see, there are no two opinions as to the
th necessity for this measure. The Bill does not involve any departure from the
w long-established usage in this country or the recognized right of Government, here
and elsewhere, to safeguard its interests. What is now intended is simply to give
legislative sanction to the existing practice of recovering, as arrears of public
revenue, moneys which have been entrusted to public servants in their official
capacity and for which they are bound to account by virtue of their office. In
regard to the details of the several provisions, there is, of course, some difference
of opinion, and the need for various amendments has been suggested. These, how-
ever, do not affect the principle of the Bill and are best considered at a later stage.
It does not seem to me necessary to dwell upon them now at any length, but I would
say a word or two on some of the points on which stress has been laid.

The first point is about the question of determining the amount of liability
due from the public servant at fault. As a matter of fact, the amount of liability
in each case is, and must always be, determined mainly by reference to accounts.
For various reasons, the procedure adopted in this respect in the several departments
of the State is not uniform. It varies not only with the responsibilities attached to
each office but also with the conditions of service in each department. As the sole
object of this Bill is to provide a legal sanction for the procedure generally
adopted in such cases, I am inclined to think that the regulation of the pro-
cedure and the methods by which the amount of liability is to be determined
and any safeguards necessary in the interests of the public servants concerned had
better be done by executive orders. On this point, I would also submit that having
regard to the steady improvements that have been and are being made in our Revenue
administration and the *personnel* of the Revenue Department at the present day,
there is not, to my mind, any great room for apprehension that the provisions
of the Bill would be so worked as to cause any real hardship to the public
servants. Again, we should remember that in a measure of this kind, we are
dealing not with the relations between master and servant but with the official
relationship between the Government and its servants, where the conditions of the
public service impose limitations which are not applicable to the ordinary public, so

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that in prescribing a procedure for determining the amount of liability or taking out processes against public servants, we are not altogether in the same position as we would be in dealing with the ordinary people on whm revenue demands may have to be made.

The next point is the remedy by civil suit. To my humble thinking, that, too, is not a matter that need cause any alarm or give rise to much discussion in reference to this Bill. As already pointed out by my friend Mr. Ramier, there is no room for apprehension that any attempt is now made to oust the jurisdiction of the civil courts. At the same time, while I fully realize the necessity for so framing our laws as to cause the least hardship to the persons whose interests are at stake, I would reserve the question of jurisdiction to be dealt with separately. It has formed the subject of a separate enactment in British India. And when a measure of that kind is contemplated or brought forward, it will be time enough to discuss the nature and the extent of the limitations that may be adopted in that direction. At present, we are concerned only with the principle of the Bill as it stands. It aims at nothing more than legalising the procedure we have been hitherto following. In regard to the wording of the sections and with reference to the points touched upon by the previous speakers, it may be necessary to adopt amendments in view to remove doubts as to the real import of the several provisions and to avoid practical difficulties in their working. The only point that seems to demand attention at this stage is the main question of the principle of the Bill. That principle is simply that the Government may take steps to recover, as arrears of public revenue, public moneys or property entrusted to public servants.

The provision in regard to imprisonment in the civil jail has also given rise to some comment. No doubt this provision has been left out in our Revenue Recovery Regulation (I of 1068), but the British Indian enactments contain the provision. The Bill now before us merely seeks to reproduce it. There is an idea that this provision savours of a retrograde policy and is likely to cause hardship. But it must be admitted that the provision has a great value by itself, though it may not be practically put in force. The very existence of such a provision will be of great help in the actual management of affairs. It will not be too much to say that the experience of those who have had the working of the Revenue Recovery Regulation in their hands would show that the absence of such a provision in that Regulation, far from being an unmixed blessing, has taken away the wholesome effect which the existence of such a provision would have secured. Before we depart from the course of legislation elsewhere in this respect, I think it is necessary to consider whether, in view of the peculiar relationship between the Government and the public servants concerned, such a provision is not necessary where there are real grounds for apprehending grave dangers in the exercise of the power conferred by the provision. This point again is one of detail, and will be fully considered at a later stage. I will not, therefore, take up the time of Council with any further remarks. I am entirely in favour of the motion for affirming the principle of the Bill.

Mr. Sesha Aiyar.—With your permission, Sir, I would like to say just a few words about this Bill. I am quite new to the work and I do not know what exactly should be the scope of my remarks. After hearing what has been said on both sides, it has struck me that however short the Bill may be, it is significant of very much. It is not one of those Bills, it seems to me, that could be gone through at one sitting.

The principle, as I understand it, is that Government should have the means of realizing possible loss by summary process from delinquent public servants. That, of course, I do not object to at all. Now, this principle of the Bill, if the proceedings in this Council on prior occasions relating to the same subject have any significance, has already been affirmed more than once, so that, so far as the broad principle is concerned, I do not think, either here in the Council or outside, there would be any demur raised. But the question comes in whether, having affirmed such a broad principle as that, the measure that is now presented would

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be exactly the measure that could be said to safeguard that principle consistent with the rights and liberties of the people. As I said, the present measure seems to be significant of much. Distinctly to my mind, it seems to give to the Executive far too much power to utilise coercive process over which, apparently as the Bill stands, there would be no check. That, I think, is certainly undesirable in any measure both in the interests of Government and in the interest of the public. We have been assured on both sides of the Council that as regards the right of civil action, of questioning in the civil courts the final decision of the Executive regarding the liability of the delinquent public servant, there can be no doubt whatever. It is good there is the assurance. But as every body knows, when a complete enactment is framed, no reference is made to the proceedings of the Council to find out if any rights are saved. We depend entirely upon the enacting sections of the statute and we cannot, therefore, be too particular what the form of the law is when it comes out as a Regulation. And, simply because in our minds there is no doubt whatever, there is no reason that such rights should not be affirmed in the Bill itself and it made complete so that there might be no misunderstanding in the minds of the public. I myself felt, though now I am glad I have no reason to feel so, whether it might not be after all that this measure was intended to be merely a coercive measure, not allowing the Government servant concerned any right to contest the decision of the Executive and whether it might not afterwards happen, seeing how hard such a measure in working was, that Government might feel called upon to introduce another Bill, as has been done in Bombay, the Revenue Jurisdiction Act? I am glad as I said that there is no room to entertain that doubt. What seems to me necessary is this, that while we affirm the principle of the Bill we have also to see, without going into the details of the Bill, what is absolutely needed to provide in a measure such as this. I take it that the most urgent provision that would be needed in any case is that all civil rights which a subject as a subject of the realm has, should not in any way, whether tacitly or explicitly, be interfered with by any provision Government may introduce. If, by making the necessary reservations and limitations it is made clear in this Bill that such rights would be preserved intact, then there would be absolutely nobody to question the appropriateness of this Bill. As I understand that this is not the stage to suggest alterations or additions to the provisions of the Bill, I do not say any thing more of it.

Mr. Kesava Pillai.—I am very glad the principle of the Bill has been affirmed by the Council. At the same time, certain remarks have been made which appear to me to strike at the root of the Bill itself. I mention this fact simply because this Bill should not share the same fate as the previous Bill, which was withdrawn after it had passed the stage of the Select Committee. The first and the most important point which has been raised by some of our learned friends is that there should be an enquiry in order to determine the claim against the public servant concerned, prior to taking any steps under the proposed measure. If what has been said in this connection means that a regular judicial enquiry is to be held prior to taking any steps under the Bill, I think we should disabuse the minds of the public on that point. All that is expected is that a summary enquiry will be held. It may not take the form of a regular judicial enquiry, such as calling certain witnesses and recording their depositions, examining the different parties, and the like. But whatever appears from the accounts and from the statements of the public servants concerned will be recorded and a decision passed in a summary manner. It is that sort of enquiry that is contemplated prior to issuing a demand notice against the public officer. If a regular judicial enquiry is contemplated by the learned speakers who have raised the objection, I beg to state that it is outside the proposed measure. In this connection, I may state that the Dewan Peishcars and other Heads of Departments are officers who can be relied on to act with common sense and to use a wise discretion, and officers of that status are not expected to adopt coercive measures without the necessary previous enquiry. It is only after enquiry and after the Head of the Department is fully satisfied that there is any claim against a public servant, that the demand notice will issue. So much as regards the main point discussed which affects the general principle of the Bill.

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As for the other points, they are all details. I would, however, refer to one or two of these, just to remove any erroneous impression which might exist in connection with this measure. With regard to the criticism regarding the provision empowering the Executive to send a defaulting public servant to the jail, I must observe that that provision is expected to be exercised in a spirit of moderation and justice and not to be used flippantly or without sufficient caution. It has been said that, in the circumstances of this country, that provision would be a hardship. I do not know what peculiar circumstances there are in this country which may render this provision of the Bill particularly objectionable. If it is in force in certain parts of British India, why it should not be worked here, I really fail to see. It cannot be said that the officers of this country are less fitted to exercise the power than those of Bombay and Madras or that the conditions of the people, so far as they relate to the recovery of Government dues, are in any way peculiar here.

The next point noticed in connection with this Bill is that the corresponding law in Bombay is confined to two Departments. If it is applicable to two Departments, why it should not be extended to others, so far as possible, is not manifest. When we take as our guide the provisions of a British Indian enactment, we do not take them bodily in the exact form in which they are found, but we take the principles involved and frame our law in accordance therewith, so as to suit the particular circumstances of this State. It is not that we should act exactly on the same lines as the British Indian Government have done in connection with any particular question. But we take the principles followed by that Government in framing their laws. That, in my humble opinion, is the way we ought to proceed in the present case also.

Then, it was said that the British Act is confined to those who furnish security. No doubt, the Bill before us is more extensive and would apply even to those who have control over public moneys and who may not have furnished security, for instance, to Tahsildars, &c. Now, in this instance too, we may utilize the provision of the British Indian Act so as to cover all cases in which a summary procedure is necessary.

With regard to the power proposed to be given to Division Peishcars to send defaulting public servants to the civil jail, I may assure the Council and the public who have felt any alarm on this point, that the officers who may exercise this power are not likely to utilise this provision in all cases. It is only in very rare instances that the power would be exercised and our officers are likely to use their discretion properly, just as much as any other officers of similar rank anywhere in British India.

With regard to the civil remedy question, I would here read sections 51 and 52 of the Revenue Recovery Regulation. From these sections, it is clear that all proceedings taken under the Regulation except those relating to the rates of land revenue may be taken before the civil courts. Now, so long as we provide in this Bill for the recovery of outstanding moneys from public servants by the same processes as are applicable to the realisation of land revenue, so far the abovesaid sections of the Revenue Recovery Regulation will apply to the cases covered by the Bill also. I do not comprehend why in every particular and special enactment we may make, we should be quoting, over and over again, the same provision with regard to the civil remedy, as if there was some apprehension that that remedy would be taken away whenever a fresh enactment is framed.

Then, it has been said that the British law confines itself to the recovery of liabilities revealed by accounts and that this Bill goes further than that. In this case too, I beg to say that we need not always be following the exact line of British Indian legislation when we adopt any particular provision. What we have to see is if our legislative enactments are in conformity with the principles underlying the laws of other civilised countries.

In conclusion, I beg to point out that if the remarks that have been made against the provisions of this Bill have reference to any points affecting its general

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object and scope, then the affirmation of the principle by the Council cannot be said to be unqualified. If, on the other hand, the sense of the Council is that those remarks refer only to incidental circumstances and details, which do not affect the main principle of the Bill, I also agree to such points being considered by the Council in discussing and amending the different sections.

President.—We should not lose sight of the fact that, in this legislation, we are only endeavouring to legalise a practice that has long existed in this State. This, in fact, is the main justification for the measure. Of late, some doubts have arisen on this question, and it is proposed to remove them by formally giving legislative sanction to the existing practice. I am not sure that in a matter of this kind, general principles as to the rights of parties and the remedies to be provided when they are infringed would be of much practical use. What we have to consider now is whether the Government should have power to recover by summary procedure public moneys and property due from its servants. There are, of course, other remedies open to Government, *viz.*, criminal prosecution of the public servant who has defrauded Government or committed mal-feasance or mis-feasance in respect of public moneys entrusted to him and the remedy by suing in a civil court. In addition to this, a summary procedure for recovering the amount due is also necessary. In this respect, we are only adopting the procedure which obtains elsewhere and which is in accordance with the long and well established usage here.

It must be remembered also that we are dealing with public servants who stand in a position of trust and confidence with the Government. They have undertaken certain responsibilities and are bound, by virtue of their being public servants, to discharge their duties faithfully. Without anticipating our further discussions to-day, I may observe that in the Breach of Contract Regulation Amendment Bill which we are about to take up for consideration, there is power given to commit to prison any artificer, workman or labourer who fails to fulfil his labour contract. There is no provision made for settling his claim or determining his liability. If a provision of this kind is thought necessary in the case of ordinary labourers who have simply contracted to render personal service, it will, I trust, be conceded that, in the case of public servants who have defrauded Government or have not discharged their trust faithfully, there is even a stronger reason and a more pressing necessity for Government to resort to summary procedure for the protection of public interests.

As regards the power to award imprisonment, I may say that the provision is there, simply as a deterrent. You are aware that similar provisions exist in the British Indian Acts. In my experience of the working of similar laws elsewhere, there has not been a single case during the last sixteen years in which this power had to be exercised. There was a good deal of discussion in connection with the Mysore Land Revenue Code whether this provision should be retained or not, and it was ultimately decided that there was no harm in retaining it and that it would serve as a deterrent and facilitate the prompt recovery of public revenue. I simply mention this for the information of the Council.

The Council having affirmed the principle of the Bill, Mr. Kesava Pillai proposed that it be referred to a Select Committee consisting of Messrs. Govinda Pillai, Rajaram Row, Ramier, Sesha Aiyar and the Mover, to report within one month.

Seconded by Mr. Nagam Aiya.

The motion was put and agreed to.

BREACH OF CONTRACT REGULATION AMENDMENT BILL.

Mr. Rajaram Row.—Sir, In asking the Council to take up for consideration the Report of the Select Committee on the Breach of Contract Amendment Bill, I beg to make a few observations. The draft Bill put into our hands has been returned to the Council with as few alterations as possible, as the original drafting was in itself clear, nor has the Select Committee found it necessary to interfere with the numbering or arrangement of the sections.

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